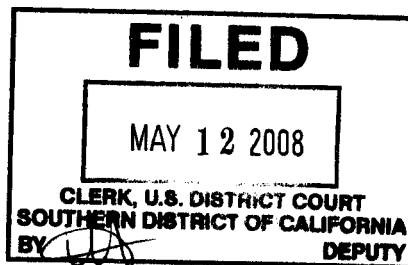


NAME AND ADDRESS OF ATTORNEY

FAUSTINO ROBINSON IN PROPER
1037 4TH AVENUE APT. 216
SAN DIEGO, CA 92101

PHONE (619) 233-8165



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRIAL JUDGE _____

COURT REPORTER _____

FAUSTINO ROBINSON
(Appellant/Appellee) Plaintiff

CIVIL NO. 07-CV-2051 W(ATB)

vs
CARY HUBBARD, Director
DOUG HARVEY, Manager
PLAZA HOTEL
(Appellant/Appellee) Defendant

NOTICE OF APPEAL (Civil)

Notice is hereby given that FAUSTINO ROBINSON

THE Plaintiff _____ Defendant above named, hereby appeals to the United States Court
of Appeals for the: (check appropriate box)

✓ Ninth Circuit

_____ Federal Circuit

from the: (check appropriate box)

CLERK'S Final Judgment

_____ Order (describe)

entered in this proceeding on the 4th day of APRIL 04/24/08, 19 ____
Transcripts required ✓ Yes _____ No.

Date civil complaint filed: ON OCTOBER 22, 2007

Date: 5/12/08

FAUSTINO ROBINSON
Signature [Signature]

UNITED STATES DISTRICT COURT

Southern District of California

Faustino Robinson

Plaintiff,

v.

Case No.: 3:07-cv-02051-W-AJB

Judge Thomas J. Whelan

Gary Hubbard, et al.

Defendant.

JUDGMENT IN A CIVIL CASE

 Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED the court grants the motion to proceed in forma pauperis, and dismisses the complaint for failure to state a claim upon which relief can be granted.

W. Samuel Hamrick, Jr.,
Clerk of the Court

Date: 4/23/08

By: s/ A. Everill, Deputy Clerk

ENTERED ON: April 23, 2008

FILED

08 APR 23 AM 9:08

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: 

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FAUSTINO ROBINSON,

CASE NO. 07-CV-2051 W (AJB)

Plaintiff,

v.

GARY HUBBARD, et al.,

**ORDER (1) GRANTING
MOTION TO PROCEED IN
FORMA PAUPERIS; AND
(2) DISMISSING COMPLAINT**

Defendants.

On October 29, 2007, Plaintiff Faustino Robinson commenced this action against Doug Harvey, in his capacity as the manager of the Plaza Hotel, and others. Plaintiff also filed a motion to proceed in forma pauperis. The court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d.1). For the reasons outlined below, the Court **GRANTS** the motion to proceed *in forma pauperis*, and **DISMISSES** the complaint for failure to state a claim upon which relief can be granted.

I. Background

In his complaint, Robinson appears to charge defendants with unlawfully opening his mail. This is at least the fourth complaint that asserts this same cause of action; the

1 first three were dismissed for failure to state a claim upon which relief can be granted
2 and/or for failure to timely prosecute. See Faustino Robinson v. Doug Harvey, No. 06-
3 cv-1455; Faustino Robinson v. Gary Hubbard, et. al., No. 06-cv-2324; Faustino
4 Robinson v. Gary Hubbard, et. al., No. 07-cv-1560.¹

5 Robinson now seeks to proceed *in forma pauperis*.
6

7 **II. Motion to Proceed in Forma Pauperis**

8 **A. Legal Standard**

9 The determination of indigency falls within the district court's discretion. Cal.
10 Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), rev'd on other grounds,
11 506 U.S. 194 (1993) ("[28 U.S.C. §] 1915 typically requires the reviewing court to
12 exercise its sound discretion in determining whether the affiant has satisfied the
13 statute's requirement of indigency."). A party need not be completely destitute to
14 proceed IFP. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948);
15 see also Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995) ("[T]he filing fee, while
16 discretionary, should not take the prisoner's last dollar."). Rather, to satisfy the
17 requirements of 28 U.S.C. § 1915(a), an affidavit need only state that one cannot
18 "because of his poverty pay or give security for costs . . . and still be able to provide
19 himself and dependents with the necessities of life." Adkins, 335 U.S., at 339. At the
20 same time, however, the court must "assure that federal funds are not squandered to
21 underwrite, at public expense, . . . the remonstrances of a suitor who is financially able,
22

23 ¹Over the past two years, Robinson also filed the following lawsuits in this district: Robinson
24 v. Brohos, No. 07-cv-875; Robinson v. Immigration Deportation, No. 06-cv-438; Robinson v. INS, No.
25 06-cv-338; Robinson v. Social Security, No. 06-cv-761; Robinson v. Burns, No. 07-cv-1095; Robinson
26 v. Burns, No. 07-cv-1380; Robinson v. Harvey, No. 06-cv-1455; Robinson v. Hubbard, No. 06-cv-
27 2324. Based on Robinson's propensity to file frivolous and harassing lawsuits, on October 30, 2007,
28 this Court entered an order in civil case no. 07cv1560 declaring Robinson a vexatious litigant and
enjoining him from suing, among others, the defendants in this lawsuit, without first obtaining leave
from the Chief Judge of the United States District Court for the Southern District of California. (See
07cv1560, Doc. No. 5.) That order was filed one day *after* Robinson filed this lawsuit.

1 in whole or in material part, to pull his own oar." Temple v. Ellerthorpe, 586 F. Supp.
2 848, 850 (D.R.I. 1984).

3
4 **B. Robinson meets the requirements to proceed in forma pauperis.**

5 Robinson is currently unemployed and last worked in March of 1984. He has no
6 checking or savings accounts, owns no automobiles or real estate, and according to his
7 IFP application, has no monthly income. Indeed, it appears that Robinson depends
8 entirely on a local charity for support. Robinson's assets and income would not allow
9 him to pay the filing fee without impairing his ability to obtain the necessities of life.
10 Accordingly, the Court **GRANTS** Robinson's request to proceed *in forma pauperis*.

11
12 **III. Sua Sponte Review of the Complaint**

13 **A. Legal Standard**

14 Under 28 U.S.C. § 1915(e)(2)(B)(ii), after a district court grants an application
15 to proceed IFP, it must review the complaint sua sponte. Lopez v. Smith, 203 F.3d
16 1122, 1126 (9th Cir. 2000). If the complaint fails to state a claim, "the court *shall*
17 dismiss the case at any time if the action . . . fails to state a claim on which relief may
18 be granted." 28 U.S.C. § 1915(e)(2)(B)(ii) (emphasis added).

19 Rule 12(b)(6) sets for the standard for failure to state a claim. Under Rule
20 12(b)(6), the court must take all allegations of material fact in the complaint as true
21 and construe them in the light most favorable to the plaintiff. See Parks Sch. of
22 Business, Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). The court may dismiss
23 either for lack of a cognizable legal theory or lack of sufficient facts alleged under a
24 cognizable legal theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534
25 (9th Cir. 1984). Further, Rule 8(b) requires a statement that will give the defendant
26 fair notice of what the plaintiff's claim is and the grounds upon which it rests.

1 **B. Robinson's complaint fails to state a claim.**

2 The court's review of Robinson's complaint reveals no facts sufficient to state a
3 claim upon which relief may be granted. Robinson's complaint consists of one
4 incomprehensible paragraph of allegations, and nowhere references a federal cause of
5 action. The court can only infer that Robinson believes the defendants have tampered
6 with his mail. But the federal statutes criminalizing mail tampering do not provide a
7 private civil cause of action. See 18 U.S.C. §§ 1701-03; Contemporary Mission, Inc.
8 v. U.S. Postal Serv., 648 F.2d 97, 103 n.7 (2d Cir. 1981) (holding that the district court
9 correctly rejected these criminal statutes as a basis for jurisdiction in a civil case).
10 Robinson's complaint contains no other allegations suggesting a discernible federal case.


11 Because Robinson's complaint fails to state a cognizable legal theory, the court
12 will **DISMISS** it without prejudice.

13
14 **IV. Conclusion & Order**

15 In light of the foregoing, the court **GRANTS** the motion to proceed *in forma*
16 *pauperis*, and **DISMISSES** the complaint for failure to state a claim upon which relief
17 can be granted.

18
19 **IT IS SO ORDERED.**

20 Dated: April 21, 2008

21
22 
23 Hon. THOMAS J. WHELAN
24 United States District Court
25 Southern District of California
26
27
28

Notice of Appeal Notification Form

To: Clerk, U.S. Court of Appeals

Date: 05/13/08

From: U.S. District Court, Southern District of California

Subject: New Appeals Case Information & Docket Fee Notification

Case Information

Case Title: Faustino Robinson v. Gary Hubbard, et al

U.S.D.C. No.: 07cv2051 W (AJB)

U.S.D.C. Judge: Thomas J. Whelan

Complaint/Indictment/Petition Filed: Complaint

Appealed Order Entered: 4/23/2008

Notice of Appeal Filed: 5/12/2008

Court Reporter: n/a

COA Status: ☐ Granted in full/part (appeal only)

☐ Denied (send clerk's file)

Docket Fee Notification

Docket Fee: ☐ Paid

☐ Not Paid

☒ No Fee Required

USA/GOVT. APPEAL: ☐ Yes

☒ No

Date F/P granted (Show Date and Attach Copy of Order): 4/23/2008

Was F/P Status Revoked? ☐ Yes

☒ No

Companion Case(s): (Please list consolidated cases, if applicable) _____

Counsel Information

Appellant Counsel:

Appellee Counsel:

Faustino Robinson

N/A

PO Box 120763

San Diego, CA 92112

Counsel Status: ☐ Retained

☐ Appointed

☒ Pro Se

Appointed by: _____

(Attach copy of order/minutes)

Defendant Information

Prisoner ID Number: _____

Bail: _____

Custody: _____

SERVICE LIST

Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:

x	Transmittal of U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form. (Appellant Only)
x	Notice of Appeal. (Appellant, Appellee, U.S. District Judge, USPO, and Court Reporter)
x	Docket Entries (Appellant and Appellee)
x	Designation of Reporter's Transcript and Ordering Form. (Appellant Only, mailed separately)
	Order for Time Schedule. (Criminal Only) (Appellant, Appellee, and Court Reporter)
	Magistrate Judge's Report and Recommendation
	COA Order
x	F/P Order
	Minute Order
x	Other: Clerk's Judgment entered 4/23/2008, Order granting IFP and dismissing complaint entered 4/23/2008

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Lauren Hammer

Deputy's Name

L. Hammer

Deputy's Signature

UNITED STATES DISTRICT COURT

Southern District Of California
 Office Of The Clerk
 880 Front Street, Room 4290
 San Diego, California 92101-8900
 Phone: (619) 557-5600
 Fax: (619) 702-9900

W. Samuel Hamrick, Jr.
 Clerk of Court

To: Clerk, U.S. Court of Appeals
 P.O. Box 193939
 San Francisco, CA 94119-3939

Re: **USCA No:**
USDC No: 07cv2051 W (AJB)
Robinson v. Hubbard, et al

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Copy of the Notice of Appeal	x	Docket Entries
x	Case Information/Docket Fee Payment Notification Form		
	Order for Time Schedule (Criminal)		
	Original Clerk's Record in	set(s) of	volume(s).
	Reporter's transcript's transcripts in	set(s) of	volume(s).
	Exhibits in	envelope(s)	box(es) folders(s)
x	Judgement Order	x	F/P Order
	CJA Form 20		Minute Order
	Certificate of Record		Mandate Return
	Magistrate Judge's Report and Recommendation		
	COA Order		
	Amended docket fee notification form		
	Order Appointing Counsel for Appeal		
x	Order granting IFP and Dismissing Complaint entered 4/23/2008		
x	Please acknowledge on the enclosed copy of this transmittal		

Sincerely yours,

W. Samuel Hamrick, Jr.
 Clerk of Court

Date: 05/13/08

By: **L. Hammer**
 Lauren Hammer, Deputy